

## **Item SPR05-38 Response Form**

**Title:** Validity and Enforceability of Court Orders Not Prepared on Mandatory Judicial Council Forms (amend Cal. Rules of Court, rule 201.1)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

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**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-38)

Title	Validity and Enforceability of Court Orders Not Prepared on Mandatory Judicial Council Forms (amend Cal. Rules of Court, rule 201.1)
Summary	The proposed amendment of rule 201.1 would provide that the validity and enforceability of otherwise legally sufficient court orders for which there are mandatory Judicial Council forms are not affected when the order is not prepared on a Judicial Council form or on the correct form.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Committee Counsel, 415-865-7535, douglas.miller@jud.ca.gov
Discussion	<p>The validity or legal effect of a court order for which a mandatory Judicial Council form has been adopted and that is not prepared on the required form is unclear. Failure to use the form may have the unintended consequence of invalidating the order or diminishing its enforceability.</p> <p>Government Code section 68511 states:</p> <p>“The Judicial Council may prescribe by rule the form and content of forms used in the courts of this state. When any such form has been so prescribed by the Judicial Council, <i>no court may use a different form which has as its aim the same function as that for which the Judicial Council’s prescribed form is designed.</i>” (Italics added)</p> <p>This statute expressly prohibits a court from using a different form than the mandatory Judicial Council form designed for the same purpose. However, section 68511 does not expressly provide that a court order for which there is a mandatory form is invalid or unenforceable in any respect if it is not prepared on that form or on the correct version of that form.</p> <p>Rule 201.1(b) of the California Rules of Court implements Government Code section 68511 and defines mandatory Judicial Council forms as follows:</p> <p>(1) Forms adopted by the Judicial Council for mandatory use</p>

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are forms prescribed under Government Code section 68511. Wherever applicable, they must be used by all parties and must be accepted for filing by all the courts.

...

- (5) The court may not alter a mandatory Judicial Council form and require the altered form's use in place of the Judicial Council form.

This rule directs the courts to accept mandatory forms for filing and prohibits the court from altering the form and requiring that the altered form be used. However, the rule, like section 68511, does not expressly prohibit a judicial officer from signing an order that is not on a mandatory Judicial Council form or on the correct mandatory form, and does not expressly invalidate or restrict the enforceability of such an order.

Although rule 201.1 is silent on the validity and enforceability of an order that could have been but was not issued on a mandatory Judicial Council form or on the correct form, the Probate and Mental Health Advisory Committee is concerned about the possibility that such orders might be challenged.<sup>1</sup> To avoid this possibility, the advisory committee proposes to amend subdivision (b) of the rule to expressly provide that failure to use a mandatory form order or the correct form order does not invalidate the order or render it unenforceable. The amendment would consist of a new paragraph (7), reading as follows:

An otherwise legally sufficient court order for which there is a mandatory Judicial Council form is not invalid or unenforceable because the order is not prepared on a Judicial Council form or the correct Judicial Council form.

The proposed amendment does not refer to and is not intended to affect orders that are designed to be entered into the Department of Justice's California Law Enforcement Telecommunications System (CLETS).<sup>2</sup> These orders are

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<sup>1</sup> Such a challenge was recently unsuccessfully made in an appeal from an order that should have been but was not on a mandatory Judicial Council form, *In re Ryan R.* (September 20, 2004) 122 Cal.App.4th 595, 599–600. The Court of Appeal decided the case on a more narrow ground that would not forestall other challenges to nonconforming orders based on rule 201.1.

<sup>2</sup> CLETS orders are protective orders issued in domestic violence prevention, civil harassment, and similar types of proceedings, data from which may be entered electronically through the CLETS system for collection in the Department of Justice's Domestic Violence Restraining Order System database for

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subject to special statutory requirements. Family Code sections 6221(c) and 6380(i) require, respectively, that such orders must be issued on Judicial Council forms approved by the Department of Justice; and prohibit transmission of orders not so issued to the Department of Justice for entry into the department's database. Section 6221(c) expressly provides, however, that the fact that a CLETS protective order is not issued on a Judicial Council form does not make the order unenforceable.

The Family Code provisions indicate that protective orders not issued on mandatory Judicial Council forms approved by the Department of Justice are impaired only in that they cannot be entered into the database. This impairment means only that a law enforcement officer cannot enforce such an order from information obtained from the database. The officer may, however, enforce the order if the officer's agency has received, or the officer has seen, a copy of it.

The Family Code is clear concerning the enforceability of a CLETS order that is not on a Judicial Council form without the need to refer to it in a rule, and no rule of court could modify that enforceability as it is defined in that code.

A copy of amended rule 201.1(b) is attached at pages 4–6.

Attachment

Rule 201.1 of the California Rules of Court would be amended, effective January 1, 2006, to read:

use by law enforcement or court personnel. Law enforcement agencies throughout the state may enforce protective orders when they receive information concerning the orders from the database without having received or seen copies of the orders. See, e.g., Family Code sections 6380 and 6381. CLETS orders are described in Family Code sections 6221 and 6380(b).

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### 1   **Rule 201.1. Judicial Council forms**

2  
3       **(a)** Judicial Council forms are either mandatory or optional.

4  
5       **(b) [Mandatory forms]**

6  
7           (1) Forms adopted by the Judicial Council for mandatory use are forms  
8               prescribed under Government Code section 68511. Wherever applicable,  
9               they must be used by all parties and must be accepted for filing by all the  
10              courts.

11  
12          (2) Each mandatory Judicial Council form is identified as mandatory by an  
13               asterisk (\*) on the list of Judicial Council forms in division III of the  
14               Appendix to the California Rules of Court. The list is available on the  
15               California Courts Web site at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).

16  
17          (3) Forms adopted by the Judicial Council for mandatory use bear the words  
18               “Form Adopted for Mandatory Use” or “Mandatory Form” in the lower  
19               left corner of the first page.

20  
21          (4) Publishers and courts reprinting a mandatory Judicial Council form in  
22               effect before July 1, 1999, must add the words “Mandatory Form” to the  
23               bottom of the first page.

24  
25          (5) The court may not alter a mandatory Judicial Council form and require  
26               the altered form’s use in place of the Judicial Council form.

27  
28          (6) The court may not require that any mandatory Judicial Council form be  
29               submitted on any color paper other than white.

30  
31          (7) An otherwise legally sufficient court order for which there is a mandatory  
32               Judicial Council form is not invalid or unenforceable because the order is  
33               not prepared on a Judicial Council form or the correct Judicial Council  
34               form.

35  
36       **(c)-(I)   \*\*\***